No. 17-459

IN THE

Supreme Court of the United States

WESCLEY FONSECA PEREIRA,

Petitioner,

v.

JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL,

Respondent.

On Writ of Certiorari
to the United States Court of Appeals
for the First Circuit

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: SEPT. 27, 2017
CERTIORARI GRANTED: JAN. 12, 2018

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Immigration Judge Decision ..... Pet. App. 20a

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 16-1033

WESCLEY FONSECA PEREIRA,

Petitioner

v.

LORETTA E. LYNCH, Attorney General
Terminated: 07/31/2017

JEFFERSON B. SESSIONS, III, Attorney General

Respondent

DOCKET ENTRIES

Date	Docket Text
01/06/2016	AGENCY CASE docketed. Petition for review filed by Petitioner Wescley Fonseca Pereira. Appearance form due 01/20/2016. Administrative record due 02/16/2016. Copy of petition served on respondent(s) pursuant to FRAP 15(c). [16-1033] (CP) [Entered: 01/06/2016 02:35 PM]

* * *

Date	Docket Text
01/22/2016	ADMINISTRATIVE record filed. [16-1033] (CP) [Entered: 01/22/2016 02:34 PM]
	* * *
05/03/2016	PETITIONER'S BRIEF filed by Petitioner Wescley Fonseca Pereira. Certificate of service dated 05/02/2016. Brief due 06/06/2016 for RESPONDENT Loretta E. Lynch. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 05/10/2016. [16-1033] (AP) [Entered: 05/03/2016 10:07 AM]
	* * *
06/15/2016	RESPONDENT'S BRIEF filed by Respondent Loretta E. Lynch. Certificate of service dated 06/06/2016. Reply brief due 06/23/2016 for PETITIONER Wescley Fonseca Pereira. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 06/22/2016. [16-1033] (AP) [Entered: 06/15/2016 04:57 PM]

Date	Docket Text
	* * *
08/03/2016	CASE calendared: Tuesday, 09/13/2016 Boston, MA Panel Courtroom. Designation form due 08/17/2016. [16-1033] (DT) [Entered: 08/03/2016 04:22 PM]
08/17/2016	ORDER entered by Sandra L. Lynch, Appellate Judge: On or before **August 24, 2016**, the parties are directed to file a written response advising the court of the status of any application by petitioner for relief under the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program. Response due 08/24/2016 for Loretta E. Lynch and Wescley Fonseca Pereira. [16-1033] (DO) [Entered: 08/17/2016 03:58 PM]
	* * *
08/23/2016	RESPONSE filed by Petitioner Wescley Fonseca Pereira to order notifying party of opportunity to respond [6026111-2], order [6026111-3]. Certificate of service dated 08/23/2016. [16-1033]. CLERK'S NOTE: Docket entry selected the wrong filer. Please disregard. (SP) [Entered: 08/23/2016

Date	Docket Text
	11:41 AM]
	* * *
08/23/2016	RESPONSE filed by Respondent Loretta E. Lynch to order notifying party of opportunity to respond [6026111-2], order [6026111-3]. Certificate of service dated 08/23/2016. [16-1033] (SP) [Entered: 08/23/2016 11:44 AM]
	* * *
08/30/2016	RESPONSE filed by Petitioner Wescley Fonseca Pereira to response [6028878-2], response [6027179-2], order notifying party of opportunity to respond [6026111-2], order [6026111-3], response [6027030-2]. Certificate of service dated 08/30/2016. [16-1033] (JBR) [Entered: 08/30/2016 09:40 AM]
09/13/2016	CASE argued. Panel: Sandra L. Lynch, Appellate Judge; Kermit V. Lipez, Appellate Judge and Rogeriee Thompson, Appellate Judge. Arguing attorneys: Jeffrey Brian Rubin for Wescley Fonseca Pereira and Sarah Pergolizzi for Loretta E. Lynch. [16-1033] (DT) [Entered: 09/13/2016

Date	Docket Text
	12:25 PM]
11/07/2016	LETTER regarding *Answer to question at argument regarding NTA procedures in the Third Circuit* filed by Attorney Sarah Pergolizzi for Respondent Loretta E. Lynch. Certificate of service dated 11/07/2016. [16-1033] (SP) [Entered: 11/07/2016 10:39 AM]
07/31/2017	OPINION issued by Sandra L. Lynch, Appellate Judge; Kermit V. Lipez, Appellate Judge and Rogeriee Thompson, Appellate Judge. Published. [16-1033] (CP) [Entered: 07/31/2017 03:38 PM]
07/31/2017	JUDGMENT. Denied [16-1033] (CP) [Entered: 07/31/2017 03:49 PM]
09/25/2017	MANDATE issued. [16-1033] (TS) [Entered: 09/25/2017 10:30 AM]
09/28/2017	U.S. SUPREME COURT NOTICE advising a petition for a writ of certiorari was filed on 09/27/2017 and assigned case number 17-459. [16-1033] (CP) [Entered: 10/02/2017 09:16 AM]
01/12/2018	U.S. SUPREME COURT ORDER entered on 01/12/2018. The petition

Date	Docket Text
	for a writ of certiorari was granted. [16-1033] (CP) [Entered: 01/18/2018 12:24 PM]

U.S. Department of Justice
Immigration and Naturalization Service

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: A096 416 756
Case No: XBO0605000091

In the Matter of:

Respondent: Wescley Fonseca PEREIRA currently residing at:

19 BARLING AVE.
OAK BLUFFS MASSACHUSETTS 02557
(Number, street, city state and ZIP code)

774 836 8485
(Area code and phone number)

☐ 1. You are an arriving alien.

☐ 2. You are an alien present in the United States who has not been admitted or paroled.

☒ 3. You have been admitted to the United States, but are deportable for the reasons stated below.

The Service alleges that you:

1) You are not a citizen or national of the United States;

2) You are a native of BRAZIL and a citizen of BRAZIL;

3) You were admitted to the United States at Miami, FL on or about June 22, 2000 as a nonimmigrant visitor with authorization to remain in the United States for a temporary period not to exceed December 21, 2000;

4) You remained in the United States beyond December 21, 2000 without authorization from the Immigration and Naturalization Service.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(1)(B) of the Immigration and Nationality Act (Act), as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted, in violation of this Act or any other law of the United States.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to:
☐ 8 CFR 208.30(f)(2) ☐ 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: JFK Federal Building 15 New Sudbury Street Room 320 Boston MASSACHUSETTS US 0220
(Complete Address of Immigration Court, Including Room Number, if any)

on a date to be set at a time to be set to show why
(Date) (Time)
you should not be removed from the United States based on the charge(s) set forth above.

RICHARD DEASY
SUPERVISORY SPECIAL AGENT
(Signature and Title of Issuing Officer)

Date: 5/31/06 Boston, MA
(City and State)

See reverse for important information

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are under removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 3.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this Notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents which you desire to have considered in connection with your case. If any document is in a foreign language, you must bring the original and a certified English translation of the document. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing.

At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the

Notice to Appear and that you are inadmissible or deportable on the charges contained in the Notice to Appear. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge.

You will be advised by the immigration judge before whom you appear, of any relief from removal for which you may appear eligible including the privilege of departing voluntarily. You will be given a reasonable opportunity to make any such application to the immigration judge.

Failure to appear: You are required to provide the INS, in writing, with your full mailing address and telephone number. You must notify the Immigration Court immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration

judge in your absence, and you may be arrested and detained by the INS.

Request for Prompt Hearing

To expedite a determination in my case, I request an immediate hearing. I waive my right to have a 10-day period prior to appearing before an immigration judge.

_____

(Signature of Respondent)

Before:

_____

(Signature und Title of INS Officer)

Date: _____

Certificate of Service

This Notice to Appear was served on the respondent by me on May 31, 2006, in the following manner and in compliance with section 239(a)(1)(F) of the Act:

☒ in person
☐ by certified mail, return receipt requested
☐ by regular mail
☐ Attached is a credible fear worksheet.
☒ Attached is a list of organizations and attorneys which provide free legal services.

The alien was provided oral notice in the *English* language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Wescley F. Pereira
(Signature of Respondent if Personally Served)

ELIZABETH POLEET *Elizabeth Poleet*
SPECIAL AGENT
(Signature and Title of Officer)

Form I-862 (Rev. 3/22/99)N

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

RE: PEREIRA, WESCLEY FONSECA
FILE: A96-416-756

DATE: Sep 21, 2007

TO:

PEREIRA, WESCLEY FONSECA
19 BARLING AVE
OAK BLUFFS, MA 02557

Please take notice that the above captioned case has been scheduled for a MASTER hearing before the Immigration Court on Oct 31, 2007 at 09:30 A.M. at:

JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must

appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions: (1) You may be taken into custody by the Department of Homeland Security and held for further action. OR (2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT BOSTON, MA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW

ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A list of free legal service providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 703-305-1662.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:
(MAIL (M)) PERSONAL SERVICE (P)

TO: [✓] ALIEN [ ] ALIEN c/o Custodial Officer
[ ] ALIEN's ATT/REP [✓] DHS

DATE: *9/21/07* BY: COURT STAFF *PC*

Attachments: [✓] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

In the Matter of: PEREIRA, WESCLEY FONSECA	Case No.: A96-416-756
RESPONDENT	Docket: BOSTON, MASSACHUSETTS IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Oct, 31, 2007, at 9:30 AM, pursuant to proper notice, the above entitled matter was scheduled for a hearing before an Immigration Judge for the purpose of hearing the merits relative to the RESPONDENT request for relief from removal. However,

(X) the respondent was not present.

( ) the respondent's representative was present; however, the respondent was not present.

( ) neither the respondent nor the respondent's representative was present.

Therefore, in the absence of any showing of good cause for the respondent's failure to appear at the

hearing concerning the request for relief, I find that the respondent has abandoned any and all claim(s) for relief from removal.

Wherefore, the issue of removability having been resolved, it is HEREBY ORDERED for the reasons set forth in the Immigration and Naturalization Service charging document that the respondent be removed from the United States to BRAZIL.

Matthew J. D'Angelo
MATTHEW J. D'ANGELO
Immigration Judge
Date: Nov 6, 2007

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M)
PERSONAL SERVICE (P)

TO: (*M*) ALIEN ( ) ALIEN c/o Custodial Officer
( ) Alien's ATT/REP (*P*) DHS

Date: *11-6-07* BY: COURT STAFF *MLT*

Attachments: ( )EOIR-33 ( ) EOIR-28
( ) Legal Services List ( ) Other

Form EOIR 36 – 7T (FTA)

Paulo J. Moura
15 Main St. Ext. Ste. 5
Plymouth MA 02360

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

Boston

In Re the Matter of:	)	
	)	File No. A# 096-416-756
Wescley Fonseca Pereira	)	Before Hon. Judge
Respondent,	)	D'Angelo
	)	
In Removal Proceedings	)	*Detained--Bristol County*

MOTION TO REOPEN
IN-ABSENTIA ORDER OF REMOVAL OF
OCTOBER 31, 2007

Now comes the respondent in the above referenced matter and respectfully requests this Honorable Court to re-open it's "In Absentia" Order of June 8, 2010, pursuant to INA ss. 240(b)(5)(c)(ii) as respondent, did not voluntarily evade notice of said proceedings where ICE prepared the Notice to Appear incompletely indicating the "physical residential address" of 19 Barling Ave, Oak Bluffs MA instead of the actual "mailing address" of P.O. Box 4521 Vineyard Haven, MA 02568 as stated and sworn in respondent's attached affidavit in support of this motion. Exhibit A: "Notice to Appear." This is

not an uncommon error which causes many residents of Martha's Vineyard to inadvertently fail to appear. Please refer to his Sovereign Bank statement attached as Exhibit B, personal correspondence attached as Exhibit C, and 2011 federal tax return attached as Exhibit D, as evidence of his mailing address.

The Respondent is the father of K F , a four year-old U.S. citizen. Exhibit E (birth certificate); Exhibit F (family photograph). The Respondent's wife, Sandra Gomes, is in the final trimester of her second pregnancy and has a due date of May 17. Exhibit G. Because Ms. Gomes is eight months pregnant, she is unable to work and relies on the Respondent to provide food and pay the household's bills.

Mr. Pereira did not intend to evade his NTA. On the contrary, the Respondent is an honest and upright person who works hard as a painter, mover, and other labors. He pays his taxes. Exhibit D. He is well-known on Martha's Vineyard, and many members of the community including lawyers, small business owners, and family friends have written to Your Honor to express their solidarity with Mr. Pereira. See Exhibit H ("very reliable... extremely honest and trustworthy at all times and I do not hesitate to vouch for him. "A wonderful person... he has many friends who are fortunate to know him." "He deserves another opportunity to do what is best for his family." "He is as honest as anyone and would do anything for anyone...").

Prior to submitting this Motion to Reopen, the Respondent's counsel conducted a case file review via the Clerk's Office and have confirmed that both the "Notice to Appear" and the "In Absentia Order of Removal" were both returned as "**undeliverable**."

Mr. Pereira came to contact with Immigration authorities after he was arrested for OUI in Tisbury, Massachusetts on May 30, 2006. However he completed his probation through Tisbury District Court, including extended probation, and his probation was terminated on July 30, 2008. Because of his successful completion of probation he was released without serving a potential 150-day sentence in the House of Correction.

In light of Mr. Pereira's circumstances, including soon-to-be second baby on the way and his excellent standing in the Martha's Vineyard, we ask Your Honor to give Mr. Pereira the chance to comply fully with immigration proceedings, including the opportunity to seek reasonable relief, prosecutorial discretion, or release on bond. Exhibit I, Docket 635-CR-458.

Wherefore, the Respondent asks that his Motion to Reopen the In-Absentia Order of Removal of October 31, 2007 be allowed in light of the above lack of notice. Until a final decision, please stay all deportation orders until a final determination is made per this Motion. I did in good faith contact DHS Counsel *"duty attorney"* and where time is of the essence do herein file the MOTION TO RE-OPEN without a position taken (to date) by DHS on *MARCH 28, 2013.*

Respectfully submitted,

Paulo J. Moura 3/28/2013

Paulo J. Moura, Esq.
BBO N0.567596
15 Main Street, Extension
Suite 5
Plymouth, MA 02360
Phone:(508)747-0111
Fax: (508)747-7666
Cell: (617)688-6634

March, 18 2013

To Whom it may concern.

I Sandra Gomes Wife of Wescley Pereira want to ask whoever can help me with my husband situation we are together for 8 years, we have a beautiful daughter who is four and was born in the USA, and we are expecting another baby on the way, I am almost 8 month of pregnant and I am not working, he is the one that pays the bills, the food and everything also. He is a very good worker, responsible, Honest and a good Husband.

I don't know how I am going to do if he's not here to help me. He is a great Husband excellent father a man with a huge heart.

Please help me.

Thank you.

Sandra Gomes

March 18, 2013

To Whom it May Concern:

I have known Wes Pereira for at least eight (8) years. He, his companion and daughter have resided in a rental house that I own for the last four (4) years. Wes has proven himself to be a very reliable individual. Not only is he responsible in taking care of the house he pays his rent in advance, no later than the 2nd of every month.

Wes is a hard worker as a house painter and has performed various jobs for me in that capacity. In addition to his house painting he also helps my wife by moving furniture and furnishings in and out of her antique store and by making deliveries of same with a friend of his.

As I have stated above, I find Wes to be reliable, responsible, extremely honest and trust worthy at all times and I do not hesitate to vouch for him.

Very truly yours,

* * *

March 18, 2013

To Whom It May Concern,

I am writing on behalf of my good neighbor, Wescley Pereira. Wescley has been my neighbor for four years. Wescley is a wonderful person. Wescley is friendly, thoughtful and very trusting. He goes out of his way to help not just his neighbors, but everyone that he can.

Wescley has recently painted my house for me. He is trustworthy and reliable. Importantly, Wescley can be counted on. He has a tremendous work ethic and along with that, he makes sure that things are done correctly. He always takes care of both his professional and personal responsibilities.

Wescley has a wonderful family and he is a great father to his 4-year-old daughter, K and husband to his loving wife, Sandra. He is soon to become a new proud father again this May. He loves his family very much and is always there for them. Additionally, he loves and cares for his Boston Terrier.

As a teacher at The Edgartown School for 23 years, I can say in all honesty that Wescley is an honorable person. Wescley has many friends who are fortunate to know him, as he is someone you can depend on and he is someone who puts others first before himself.

If I can be of more help in describing Wescley as a wonderful family man, hard worker, or good friend

and neighbor, I would be most happy to provide it for you.

I am fortunate to be a friend and neighbor of such a good person. Wescley has his priorities in the right place.

Sincerely yours,

* * *

3/18/13
To Whom It May Concern:

I have known Wescley Pereira and his wife, Sandra, since I moved to the island seven years ago. I write to assure that they are both fine, upstanding individuals and good parents to their daughter.

I have been a licensed social worker since 1968, and now work for hospice here on the island. I would be happy to vouch for Wescley at any time.

Sincerely yours,

* * *

* * *

March 18, 2013

To whom it may concern:

I have just been told that Wescley Pereira has been detained by Immigration. I have known Wes for a number of years and found him to be a very caring & giving individual. I think he is as honest as they come and would do anything for anyone with a simple request.

If anyone deserves another chance to make a life for himself and his family, it would be Wes. I have never heard him speak a cross word about anyone.

* * *

To Whom it may concern: March 18, 2013

It has come to my knowledge that Wescley Pereira has been detained as an illegal alien. I have known Wescley for at least ten years and in that time have always found him to be an honest and upright person. He would never do harm to anyone. He deserves another opportunity to do what is best for him and his family.

Wes has always worked hard in the paint trade with a friendly disposition and a warm heart. I hope that you can see the goodness in him and in all fairness, release him.

Sincerely,

* * *

30

March, 18 2013

To Whom it may concern.

I * * * would like to say that I know Wescley Pereira from the Island of Martha's Vineyard.

I know him probability about six years, we go to the same church together, he is a wonderful person, he is Married to a friend of my also Sandra and they have a daughter who was born in the USA she is four.

Sandra who is Wescley wife is now pregnant for about eight month. He is a great worker doing paint. He's very honest, and also with a lot of responsibility at his work, at his home. Wescley have a beautiful Family and he takes a great care of them.

Any thing also I'll be happy to help Wescley.

* * *

March 18, 2013

Dear Attorney Paulo Moura,

This is to attest to the character of Wescley F. Pereira.

He is a dependable, hard working young man who I have known for approximately 10 years. We became acquainted through work, which he has performed at my home (in Vineyard Haven) for many years. His professionalism impressed me from the start. Wes completes his work in a timely manner; therefore, I have relied on him over the years and have become accustomed to his dependability. Wes has a warm, polite, gentle manner. He is a wonderful, dedicated father and gentle husband who frequently speaks proudly of his young daughter and lovely wife.

It is also comforting to have Wes as a neighbor. I have depended on Wes when emergencies arise and at times this is at a moment's notice. If Wescley says that he will do something you can be assured that it will happen.

I have admired Wes not only for the high quality of his work and work ethic but also for his seriousness regarding his family and keeping himself in good health and maintaining balance in his life. Wes is frequently at the gym at 6am and on a weekend he can be found playing with his daughter. He is a sincere and proud family man as well as a thoughtful neighbor.

It is difficult to find outstanding young men such as Wes and it is a pleasure to know him. I always look forward to seeing Wes both in the neighborhood and in my home. His smile places me at ease and I can feel completely confident that he will take care of the situation at hand. He is a kind, thoughtful, gentle young man who can be relied on to do what he says and fulfill his responsibilities towards his family and friends. He is a great guy and contributes in a very positive way to our community. Without a doubt, Wes will go above and beyond to fulfill his responsibilities and I would strongly recommend his to my friends and associates as a sincere, honorable, reliable young man.

Sincerely,

* * *

Clinical Assistant Professor

* * * UMass

* * *

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
JFK FEDERAL BLDG., ROOM 320
BOSTON, MA 02203

RE: PEREIRA, WESCLEY FONSECA
FILE: A096-41S-756

DATE: Apr 4, 2013

TO: MOURA & MOURA
MOURA, PAULO JOSE
15 MAIN ST, EXT. SUITE #5
PLYMOUTH, MA 02360

Please take notice that the above captioned case has been scheduled for a MASTER hearing before the Immigration Court on Apr 8, 2013 at 08:30 A.M. at:

15 NEW SUDBURY STREET
BOSTON, MA 02203

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions: (1) You may be taken into custody by the Department of Homeland Security and held for further action. OR (2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT BOSTON, MA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE

"CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A list of free legal service providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 240-314-1500. For information on Immigration Court procedures, please consult the Immigration Court Practice Manual, available at www.usdoj.gov/eoir.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:
MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer
[✓] ALIEN's ATT/REP [✓] DHS

DATE: *4-4-2013* BY: COURT STAFF *DM*

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

NOTICE TO EOIR: ALIEN ADDRESS

Date:	04/08/2013
To:	Enter Name of BIA or Immigration Court 1-830 BOS
	Enter BIA or Immigration Court Three Letter Code@usdoj.gov BOS
From:	Enter Name of ICE Office BOSTON ERO
	Enter Street Address of ICE Office 10 New England Executive Park
	Enter City, State and Zip Code of ICE Office Burlington, MA 01803
Respondent:	Enter Respondent's Name Wescley Fonseca-Pereira
	Alien File No: Enter Respondent's Alien Number A96 416 756

* * *

Upon release from ICE custody, the respondent reported his/her address and telephone number would be:

Enter Respondent's Street Address 96 WEST

TISBURY RD

Enter Respondent's City, State and Zip Code
EDGARTOWN, MA 02539

Enter Respondent's Telephone Number (including area code) 508 560 2502

☐ I hereby certify that the respondent was provided an EEOIR-33 Form and notified that they must inform the Immigration Court of any further change of address.

ICE Official: Enter Your First, Last Name and Title
Kathleen Karaba, Enforcement and Removal Assistant

United States Department of Justice Executive
Office for Immigration Review Immigration Court
Boston, MA 02203

In the Matter of: Wescley Fonesca Pereira
File No: A – 096-416-756

In Removal Proceedings

RESPONDENT'S WRITTEN PLEADING

On behalf of my client, I make the following representations:

1. The respondent concedes proper service of the Notice to Appear, dated 05/31/06.

2. I have explained to the respondent (through an interpreter, if necessary):

   a. the rights set forth in 8 C.F.R. § 1240.10(a);

   b. the consequences of failing to appear in court as set forth in INA § 240(b)(5);

   c. the limitation on discretionary relief for failure to appear set forth in INA § 240(b)(7);

   d. the consequences of knowingly filing or making a frivolous application as set forth in INA § 240(d)(6);

   e. the requirement to notify the court within five days of any change of address or

telephone number, using Form EOIR-33/IC pursuant to 8 C.F.R. § 1003.15(d).

3. The respondent concedes the following allegation(s) *1-4*, and denies the following allegation(s) *NONE.*.

4. The respondent concedes the following charge(s) of removability *237(a)(1)(B)*, and denies the following charge(s) of removability *NONE.*

5. In the event of removal, the respondent:

☒ names Brazil as the country to which removal should be directed:

OR

☐ declines to designate a country of removal.

6. The respondent will be applying for the following forms of relief from removal:

☐ Termination of Proceedings

☐ Asylum

☐ Withholding of Removal(Restriction on Removal)

☐ Adjustment of Status

☒ Cancellation of Removal pursuant to INA § 240A(b)

☐ Waiver of Inadmissibility pursuant to INA § _____

☒ Voluntary Departure

☒ other (specify) *prosecutorial discretion*

☐ None

7. If the relief from removal requires an application, the respondent will file the application (other than asylum), no later than **fifteen (15) days** before the date of the individual calendar hearing, unless otherwise directed by the court. The respondent acknowledges that, if the applications) are not timely filed, the application(s) will be deemed waived and abandoned under 8 C.F.R. § 100331(c).

   If the respondent is filing a defensive asylum application, the asylum application will be filed in open court at the next master calendar hearing.

8. If background and security investigations are required, the respondent has received DHS biometrics instructions and will timely comply with the instructions. I have explained the instructions to the respondent(through an interpreter, if necessary), that, under 8 C.F.R. § 1003.47(d), failure to provide biometrics or other biographical information within the time allowed will constitute abandonment of the application unless the respondent

demonstrates that such failure was the result of good cause.

9. The respondent estimates that *2* hours will be required for the respondent to present the case.

10. ☒ It is requested that the Immigration Court order an interpreter proficient in the *Portuguese* language, _____ dialect;

OR

☐ The respondent speaks English and does not require the services of an interpreter.

5-8-13
Date

Jeffrey Rubin
Attorney Or
Representative for the
Respondent

RESPONDENT'S PLEADING DECLARATION

I, *Wescley F. Pereira,* have been advised of my rights in these proceedings by my attorney or representative. I waive further explanation of those rights by this court.

I have been advised by my attorney or representative of the consequences of failing to appear for a hearing. I have also been advised by my attorney of the consequences of failing to appear for a scheduled date of departure of deportation. I understand those consequences.

I have been advised by my attorney or representative of the consequences of knowingly filing a frivolous asylum application. I understand those consequences.

I have been advised by y attorney or representative of the consequences of failing to follow the DHS biometrics instructions within the time allowed. I understand those consequences.

I understand that if my mailing address changes I must notify the court within 5 days of such change by completing an Alien's Change of Address Form(Form EOIR-33/IC0 and filing it with this court.

Finally, my attorney or representative has explained to me what this Written Pleadings says. I understand it I agree with it, and I request that the court accept it as my pleading.

_____ _____

Date Respondent

CERTIFICATE OF INTERPRETATION

I, _____, am competent to translate and interpret from
(name of interpreter)

_____ into English, and I certify that I have read this entire document
(name of language)

to the respondent in _____, and that the respondent stated that he or she
(name of language)

understood the document before he or she signed the Pleading Declaration above.

_____
(signature of interpreter)

_____
(typed/printed name of interpreter)

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of		File: A096-416-756
WESCLEY FONSECA PEREIRA	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	Transcript of Hearing

Before LEONARD I. SHAPIRO, Immigration Judge

Date: July 10, 2014 Place: BOSTON, MASSACHUSETTS

Transcribed by FREE STATE REPORTING, Inc.-2

Official Interpreter:

Language:

Appearances:

For the Respondent: ASHLEY M. EDENS

For the DHS: MARNA M. RUSHER

* * *

JUDGE TO MR. PEREIRA

Judge D'Angelo had marked as Exhibit No. 1-A the notice of the hearing on October 31, 2007 that you missed. But you, you were not living in - at 19, what was it, 16 Barling Avenue?

MR. PEREIRA TO JUDGE

Yes, Your Honor, and can I say something?

JUDGE TO MR. PEREIRA

Yes, sure, go ahead.

MR. PEREIRA TO JUDGE

Excuse me. We live in Martha's Vineyard. And when I came here the first time they say —

JUDGE TO MR. PEREIRA

You need to make — move —

MR. PEREIRA TO JUDGE

We live in Martha's Vineyard--

JUDGE TO MR. PEREIRA

Yes.

MR. PEREIRA TO JUDGE

— and I gave the p. o. box to - and Martha's Vineyard, they don't deliver the mail at house, at home, at a physical address and for me that's never came because Mrs. —

JUDGE TO MR. PEREIRA

Well, it's okay.

MR. PEREIRA TO JUDGE

— if I remember —

JUDGE TO MR. PEREIRA

Suffice it to say, sir, you didn't get the notice —

MR. PEREIRA TO JUDGE

No.

JUDGE TO MR. PEREIRA

- is that right?

MR. PEREIRA TO JUDGE

That's —

JUDGE TO MR. PEREIRA

Yes —

MR. PEREIRA TO JUDGE

— right.

JUDGE TO MR. PEREIRA

— that's okay. And I, as a result of that, I believe I reopened your case.

MR. PEREIRA TO JUDGE

Yes, sir.

JUDGE TO MR. PEREIRA

Is that right?

MR. PEREIRA TO JUDGE

Yes. And I called Mrs., if I remember Mrs. Bullet [phonetic sp.], who works here, and she say I'm should still waiting, that was in the end of —

JUDGE TO MR. PEREIRA

Well, I, I don't know —

MR. PEREIRA TO JUDGE

— 2006.

JUDGE TO MR. PEREIRA

— really what you're saying. So I don't know what that has to do with, what's that have to do with anything?

MR. PEREIRA TO JUDGE

No, I just tried to find out the date before with the number I have —

JUDGE TO MR. PEREIRA

Yes.

MR. PEREIRA TO JUDGE

— in hand.

JUDGE TO MR. PEREIRA

Well, I reopened the case anyway.

MR. PEREIRA TO JUDGE

Yes.

JUDGE TO MR. PEREIRA

So that, that — you're all set there.

MR. PEREIRA TO JUDGE

Okay.

JUDGE TO MR. PEREIRA

What's your address now?

MR. PEREIRA TO JUDGE

96 West Cheesburg [phonetic sp.] Road, Edgartown, Massachusetts.

JUDGE TO MR. PEREIRA

Edgartown, yes?

MR. PEREIRA TO JUDGE

Yes.

JUDGE TO MR. PEREIRA

Okay. You got the Notice to Appear, the first notice that was given to you on May 31, 2006, is that right?

MR. PEREIRA TO JUDGE

I, when arrested.

JUDGE TO MR. PEREIRA

Yes, they gave it to you, signed for it. Is that right?

MR. PEREIRA TO JUDGE

Yes.

JUDGE TO MR. PEREIRA

Yes, okay.

MR. PEREIRA TO JUDGE

Yes, Your Honor.

* * *

To Whom It May Concern:

I am writing on behalf of my neighbor and close friend Wescley Pereira who I have known for over 10 years.

Wescley is a kind and caring person. Wescley always thinks of others and cares about how everyone is doing. Wescley is always ready to help anyone in need and even if not, Wescley is always there anyway, as a friend and someone you can fully count on and trust.

I am fortunate to have friends and neighbors like Wescley and his family. Wescley, his wife Sandra, their five year old daughter K and their one year old baby daughter M L are a loving and gracious family, along with their adorable dog Jolie. I have been invited many times to their family functions such as birthdays and holiday celebrations. They are truly a lovely family who spend quality time together and also share family time with friends and neighbors.

Together they have become an integral part of our community in Edgartown. Wescley and his family have a long-standing and close connection in this community and it is important to share how much Wescley and his family are thought of by our community.

It is because I know Wescley as I do, as a wonderful family man, kind, considerate and trustworthy human being, that I convey this in a

way that expresses the kind of decent and dependable person Wescley is.

If you have any questions at all, please do not hesitate to contact me, as I will be happy to oblige.

Sincerely yours,

* * *

Teacher
The Edgartown School
Edgartown, MA

* * *

* * *

May 26, 2014

Re: Wescley Pereira

Dear Sir/Madame:

My name is * * *. I am a U.S. citizen and have lived on Martha's Vineyard for twenty-three years. I have been in the painting and landscaping business for the last sixteen years and have worked side by side with Wes for twelve years. Personally and professionally, Wes is a person that can be relied upon. He is willing to always lend a helping hand and always gives his best efforts. Wes is a responsible, diligent, and honest individual. He has worked extremely hard to create a better life for himself and his family.

Perhaps the best example of Wes' outstanding character is his influence and guidance of his older daughter, K . Wes has taught her to be polite, kind, and friendly. I am constantly amazed at how personable K is and I attribute that to the fine example that Wes sets. He is a reliable, supportive, and loving husband and father. He provides for his family and his absence would be a huge loss to his wife Sandra and his two little girls. Undoubtedly, Wes is irreplaceable to his family and our community.

Yours truly,

* * *

* * *

6/26/2014

To Whom it may concern,

My name is * * *. Wesley Perira has been a friend of my family for over 10 years. I know his wife Sandra and their 2 children K C and M L as well as their Boston terrier Joly.

Wesley has been a true and valued friend as he is loyal as the day is long. He is always pleasant and hardworking. He never hesitates to come help me out on my farm even when I call him last minute.

Wesley is a trusted and respected friend and it is a comfort to know I can always count on him to be there. I believe he is deserving of citizenship of this country.

Sincerely,

* * *

June 27, 2014

U.S. Citizen and Immigration Services
Boston, MA

Dear Sir/Madam

I hereby confirm that Wesley Pereira, his wife Sandra and daughters K and M L , reside at 96 West Tisbury Road, Edgartown, MA and have rented same for the past six years.

Wesley has always paid the rent in advance on the first of each month or before. He is a hard working individual and is very helpful to others. He has high morals and I do not hesitate to vouch for him. He is a credit to the community.

Very truly yours,

* * *

June 2, 2014

To whom it may concern,

Wesley Pereira is not just a worker for us but a friend, as well. You cannot help liking him and his lovely wife, Sandra Perira, and daughters K C and M L .

We have known him for many years. He is such a hard worker taking pride in everything he does. His work is always exceptional.

Recently I lost my husband and it is very difficult for a woman alone to care for a house and property. Wesley has been such a help to me in so many ways – always willing and sometimes just appearing and asking what he could do for me.

My friends and I would be lost without him. He is definitely one of a kind – so honest, trustworthy, cheerful, a true friend, and one of the best workers I have ever employed.

Most Sincerely,

* * *

June 9, 2014

To whom it may concern:

I have known Wesley Pereira for 8 years. He is a customer in the retail store in which I work. Wesley has always been pleasant and courteous. I have seen him with his family. He is a devoted husband to Sandra Pereira and a wonderful father to his two children, K C F and M L F . Wesley is an honest and hard working young family man.

Respectfully,

* * *

To whom it may concern:

I am writing on behalf of Wesley Pereira.

Wesley has been working for a friend for many years. He also helps me when I am in need of trustworthy. His character is beyond excellent and he's a very hard worker.

Wesley is a wonderful father and husband.

Sincerely,

* * *

DMM:MGL:EAR:SKP
39-36-4225

U.S. Department of Justice

Office of Immigration Litigation
Civil Division
P.O. Box 878, Ben Franklin Station
Washington, D.C. 2044

November 7, 2016

By Electronic Filing
Margaret Carter, Deputy Clerk
United States Court of Appeals for the First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

RE: *Wesley Fonseca Pereira v. Loretta Lynch, Attorney General*, No. 16-1033 (1st Cir. argued Sept. 13, 2016); Agency No. A096-416-756

Dear Ms. Carter:

During oral argument in the above-captioned case, the Court asked what procedures the government is following in cases that are affected by the Third Circuit's decision in *Orozco-Velasquez v. Att'y Gen.*, 817 F.3d 78 (3d Cir. 2016).

We shared the Court's inquiry with both the Executive Office for Immigration Review, which includes the Board of Immigration Appeals and

immigration courts, and with U.S. Immigration and Customs Enforcement (ICE), whose attorneys represent the Department of Homeland Security in administrative removal proceedings before the Board and immigration judges. We are advised that the general procedures for determining the date and time of removal hearings have not changed. *See* 8 C.F.R. § 1003.18. We are further advised, however, that both agencies are familiar with the Third Circuit's holding, and, following *Orozco-Velasquez*, ICE offices within the Third Circuit do not contend that service of the notice to appear activates the "stop-time" rule at 8 U.S.C. § 1229b(d)(1)(A) in similar cases in that circuit if the notice to appear does not include the hearing date and location.

Sincerely,

/s Sarah K. Pergolizzi
Trial Attorney
Office of Immigration Litigation
Civil Division, U.S. Dep't of Justice
P. O. Box 878, Ben Franklin Station
Washington, D.C. 20044
202-598-8769

via CM/ECF

cc: Jeffrey B. Rubin
Attorney for Petitioner
Three Center Plaza, Suite 400
Boston, MA 02108